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EXAMINER

MADSEN, ROBERT A

ART UNIT PAPER NUMBER

1761

DATE MAILED: 04/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/839,715

Applicant(s)

RENINI ET AL.

Examiner

Robert Madsen

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 10, 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-11 and 13-68 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-11 and 13-68 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on May 10, 2004 has been entered. Claims 1,3-11 and 13-68 remain pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1,3-11,13-68 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1, 51, and 68 recite "the unhomogenized sugar pellets". The Examiner fails to find support for this limitation in the specification.

Claim Rejections - 35 USC § 103

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 3-11, 18-26, 28, 30, 34-37, 41-45, 49-58, 60-64, 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) in view of Glass (US 5897894).

6. Regarding claims 1, 51, 68, Sheu teaches producing a microwave popcorn product by providing a microwave container with a top, bottom and opening (e.g. a bag in Example B), introducing a sugar mass (which is not homogenized, but mixed) and unpopped kernels to the container wherein the sugar mass is not "homogeneously mixed with the unpopped kernels" because the pellet is placed in the bag after the bag is filled with kernels as recited in claims 1, 51, and 68 (see Example B), introducing an oil component, which comprises to the container wherein more of the oil is understood to be with the kernels because the oil component is added with the kernels to the bag separately in the bottom of the bag, while the sugar mass is added to the middle of the bag as recited in claims 1, 51, and 68 (See Example B), and the kernels appear to "act general as a buffer between the sugar and the oil component" because there is minimum burning in the product and few kernels had a brown color, and the sugar mass is formed substantially free of emulsifiers because the are made of "up to 4%" emulsifiers or even 0.1% emulsifiers as recited in claim 1 (Page 9, lines 4-12, Page 8, lines 8-35, Example B, Page 6, lines 18-29). Sheu teaches the sugar mass is either added separately, as discussed above, or in mass with the other ingredients (Examples

Art Unit: 1761

A and B). Sheu teaches the sugar mass may be cut up into workable portions or desired shapes (Page 8, lines 32-35), but Sheu is silent in teachings a plurality of portions and shapes are added to the popcorn.

7. Glass is relied on as evidence of the conventional method of filling microwave popcorn bags on a commercial scale. Glass teaches that in early methods the ingredients were added to a bag by inserting a single solidified mass containing all the ingredients, such as example A of Sheu, but in contemporary methods kernels, oil, and particulate flavor components, such as sugar, are each separately added, as taught in example B of Sheu. (Column 1, line 40 to Column 2, line 11, Column 6, lines 56-64). In the contemporary method the ingredients are flowable and readily dispensable (i.e. the kernels are measure via a dispensing wheel, the fat is added by spraying, the flavoring component uses similar filling equipment as sugar packets as discussed in Column 7, lines 55 to Column 8, line 10, Column 8, line 47-54). Therefore it would have been obvious to modify Sheu such that the sugar mass was in some form of particulate or pellet form depending on the intended method of commercial filling, since Sheu teaches the sugar mass may be cut up into desired pieces and Glass teaches contemporary filling methods utilize filling stations for adding flavoring or sugars via a sugar packet type filling machine and one would have to cut up the sugar mass of Sheu in order for the sugar to be dispensed by a conventional sugar packet type filling machine.

8. Regarding claim 3, Sheu teaches that emulsifiers up to 4% are added such that burning and sticking is minimized. Sheu also teaches the level of sugar component or

Art Unit: 1761

pellet selected may vary depending on the type of ingredients used, which may be sugarless, and the desired level of sweetness (Page 6, lines 9-30). However, Sheu does not teach a composition not having any emulsifiers. Glass teaches that sugars up to 0.5% of the composition will not burn in the conventional microwave popcorn composition (Column 6, line 56 to Column 7, line3). Therefore, it would have been obvious to not add any emulsifiers to the sugar pellets of Sheu since Sheu teaches up to 4% emulsifiers to prevent burning, Sheu teaches the amount of level of sugar/sweetening component depends on the type of sweeteners used as well as the desired sweetness level, Glass teaches that sugars up to 0.5% of the composition will not burn in the conventional microwave popcorn composition. Thus, a level of 0.5% of sugar /sweetener component would not require an emulsifier, and it is well known in the art that high intensity sugarless sweeteners offer the same sweetness as sugar in a much smaller quantity.

9. Regarding claims 4-11,22,23, 34,35, 49, 50 Sheu teaches preparing sugar pellets by mixing sugar with corn syrup at a ratio between 1:1 and 5:1 as recited in claims 4 and 5 or 30-75% sugar as recited in claim 49, as well as a polishing material as recited in claim 50 and removing the moisture to a level no greater than 2.5% as recited in claims 8 and 9 by heating between 110-170°C as recited in claim 1) and exposed to vacuum to remove moisture as recited in claim 11, wherein the sugar pellets make up 40-70% of the total product as recited in claims 7, an oil component (i.e. 25 g fat in Example B out of 195 g total) makes up 12.8% of the total product as recited in claim 26 and the unpopped kernels make up 20-60% of the weight of the total product as

Art Unit: 1761

recited in claims 6,22,23,34,35 (See Page 8, lines 8-35, Page 9, lines 4-12,Page 5 line 17 to Page 6 line 35 and Example B).

10. Regarding claims 18-21,30,41-44,54-56,58,60-63, Sheu teaches a microwave paper based bag with a top, middle and bottom section with the sugar pellet closer to the top than the kernels and oil as recited in claim 43 and 62(Example B, Page 1, lines 34-39) and wherein the entire composition is contained within the middle portion as recited in claims 42,43,61,62 when added simultaneously (Example A), but is silent in teaching the bag includes a susceptor as recited in claim 18 , 54, and 63 positioned over at least 40% or 50% of the length of the bottom surface of the bag as recited in claims 19-21,55,56, at least 90% of the width of the bag as recited in claim 30, or the entire middle section as recited in claim 44 and 58, the bag is folded in to equal portions as recited in claim 41, 60, the entire composition is substantially in the middle when added the sugar pellets are added separately, as recited in claims 42,43,61, 62.

11. Glass is relied on as evidence of the conventional type of microwave popcorn bags used for contemporary filling methods. Glass teaches conventional microwave popcorn bags may have a susceptor attached to every surface (i.e. a ply) as recited in claims 18-21,30,44,54,56, 58,63, or only a portion of the surface, depending on the cost constraints. Glass teaches in the contemporary method of filling a microwave popcorn bag the bag is divided into three equal section as recited in claims 55 and 60 for folding , wherein the bottom section is folded during filling such that the components are substantially in the desired middle region with the sugar pellets on top as recited in claims 41-43, 61,62(see Column 4, lines 15-67,48-54 Column 7, line 15 to column 8,

Art Unit: 1761

line 33). Therefore, it would have been obvious to modify Sheu and include a susceptor on all surfaces as recite in claims 18-21,30,54,56, 58,63, since Glass teaches the conventional microwave popcorn bag is made with a susceptor ply throughout the entire package, depending on cost considerations. It would have been further obvious to utilize a bag divided into three equal sections and folded as recited in claims 55 and 60, wherein the bottom section is folded prior to filling such that the components are substantially in the middle region with the sugar pellets on top as recited in claims 41-43, 61,62, since Glass teaches this is the contemporary method of filling and that it is desirable to maintain the ingredients in the middle portion of the bag.

12. Regarding claims 24,25,28,36,37,45,57,64, Sheu teaches an oil component (i.e. 25 g fat in Example B out of 195 g total) of 12.8% of the total product in one example, which may be combined with the sugar pellet (e.g. Example A and Example B in light of Page 5, lines 38-39), the unpopped kernels make up 20-60% of the weight of the total product, and the level sugar component or pellets may vary depending on the type of ingredients used, which may be sugarless, and the desired level of sweetness, and the overall composition may be high fat, low fat or no-fat(See Page 8, lines 8-35, Page 9, lines 4-12,Page 5 line 17 to Page 6 line 35 and Example B). Sheu is silent in teaching 1-10% as recited in claim 24,28,45,57,64, 2-4% as recited in claims 25, 5-35% as recited in claim 36, 15-25% in claim 37. However, to select any particular level of sugar component or pellet less than 40%, would a have been obvious depending on (1) the composition of the sugar pellet and (2) the desired sweetness since Sheu teaches the amount of sugar pellet added may vary according the desired sweetness and pellet

Art Unit: 1761

composition, which may be sugarless. For example, it was well known in the art that sugarless high intensity sweeteners can provide the same sweetness as sugar, but at a lower concentration, and a composition including "sugarless" pellets made with such high intensity sweeteners could be included at a lower concentration, yet provide the same sweetness as "sugar" containing pellets.

13. Regarding claims 52 and 53, Sheu teaches adding the sugar mass separately after adding the kernel/oil mixture to the bag or adding all three main components simultaneously to the bag to achieve the same desired product (Examples A and B). Glass teaches it was well known to concurrently add all the ingredients at the same filling step, and these utilize different types of equipment than discussed above in the rejection of claims 1, 51, and 68 (Column 8, lines 34-42). Therefore, to select any particular order of addition, such as adding the sugar pellets before the oil or kernels as recited in claims 52 and 5 would have been an obvious, depending on the type of equipment available since Sheu teaches the order of addition does not change the end product and Glass teaches one may fill a popcorn bag with particulates in either multiple fill stations or a single fill station, which requires different filling equipment.

14. Claims 13-15, 27,29,38-40,46,59,65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) in view of Glass (US 5897894) as applied to claims 1, 3-11,18-26,28,30,34-37,41-45,49-58,60-64,68 above, further in view of Monsalve (US 5919505).

Art Unit: 1761

15. Sheu teaches an oil component (i.e. 25 g fat in Example B out of 195 g total) of 12.8% of the total product in one example, which may be combined with the sugar pellet (e.g. Example A and Example B in light of Page 5, lines 38-39), the unpopped kernels make up 20-60% of the weight of the total product, and the level sugar component or pellets may vary depending on the type of ingredients used, which may be sugarless, and the desired level of sweetness, and the overall composition may be high fat, low fat or no-fat. Sheu also teaches the sugar pellet portion may include color and butter flavor. (See Page 8, lines 8-35, Page 9, lines 4-12, Page 5 line 17 to Page 6 line 35 and Example B). Sheu is silent in teaching the oil component includes partially hydrogenated soybean oil, salt color, butter flavor, and sucralose as recited in claim 13, salt from 1-10% as recited in claims 14 and 15, a fat level beyond 12.8%, such as 30-40%, which falls within the ranges recited in claims 27, 29, 38, 39, 40, 46, 59 or 65 or 2-4% sugar pellets as recited in claims 29, 46 and 65 and 15-25% sugar pellets in claim 40 and 59.

16. Monsalve is relied on as evidence of varying compositions of conventional microwave popcorn products. Monsalve teaches microwave popcorn products including a sugar portion can be salt free or comprise 1-6% salt (Column 6, lines 33-40, 51-54, 61-67). Monsalve also teaches oil, salt, butter flavor, color and sweetener may all be included in the oil component, wherein hydrogenated soy bean oil is preferred as the oil (column 6, lines 33-60 and Column 5, lines 30-35). Monsalve teaches the particular fat level associated with high fat, reduced fat, and low fat as pertaining to microwave

Art Unit: 1761

popcorn products. Low fat is 2-8% fat, reduced fat is 8-15% and high fat is 25-40% (Column 4, line 67 to Column 5, line 14).

17. With respect to claims 13-15, it would have been obvious to include fat, butter flavor, color and a sugarless sweetener in a single component since Sheu teaches all of these components can be combined in the sugar component. To select any particular sugarless sweetener, such as sucralose, would have been obvious, depending on the desired sweetness since Sheu teaches using sugarless sweeteners, one may select any particular desired sweetness, and sugarless sweeteners vary in sweetness intensity. It would have been further obvious to select hydrogenated soybean oil, since Monsalve teaches this is a preferred oil source for microwave popcorn compositions. It also would have been further obvious to add any particular level of salt such as 1-6%, depending on whether one desired a salty, low salt, or no-salt product, since Monsalve teaches the conventional microwave popcorn product that includes sugars may be offered in a no salt, low salt or anywhere from 1-6% salt level.

18. With respect to claims 27, 29, 38-40, 46, 59, 65, to select any particular fat level, such as 30-40%, would have been obvious, depending on the desired fat level of the product since Sheu teaches the composition may be high fat, low fat, or fat-free, and Monsalve teaches low fat popcorn products have 2-8% fat, reduced fat popcorn has 8-15% and high fat popcorn has 25-40%. Furthermore, to select any particular level of sugar component or pellet less than 40%, would have been obvious depending on (1) the composition of the sugar pellet and (2) the desired sweetness since Sheu teaches the amount of sugar pellet added may vary according the desired sweetness and pellet

Art Unit: 1761

composition, which may be sugarless. For example, with respect to the composition, it was well known in the art that sugarless high intensity sweeteners can provide the same sweetness as sugar, but at a lower concentration, and a composition including "sugarless" pellets made with such high intensity sweeteners could be included at a lower concentration, yet provide the same sweetness as "sugar" containing pellets.

19. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) in view of Glass (US 5897894) as applied to claims 1, 3-11, 18-26, 28, 30, 34-37, 41-45, 49-58, 60-64, 68 above, further in view of Katz et al. (US 3851574).

20. Regarding claim 16, Sheu teaches the microwave bag is made from paper and oil serves as heat sink to heat the popcorn (Page 1, lines 34-39), Sheu does not expressly teach that the bag is without a susceptor. Glass teaches one may select a susceptor of a reduced size, based on cost considerations (column 8, lines 20-25). Katz also teaches a sugar/oil/popcorn composition heated in a microwavable bag and uses paper based bag without a susceptor (Column 1, line 58 to column 2, line 7 Column 2, line 43-57, Figures, Column 5, lines 23-30). Therefore, it would have been obvious modify Sheu and select a bag without the use a susceptor, depending on the cost constraints, since (1) Glass teaches susceptors impact the cost of microwave bags and (2) Katz teaches that is possible to prepare sugar/oil/kernel compositions in paper-based bags without a susceptor in the microwave.

Art Unit: 1761

21. Regarding claim 17, Sheu teaches 40-70% sugar pellets in the composition (See Example B).

22. Claims 31-33, 47 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) in view of Glass (US 5897894) as applied to claims 1, 3-11, 18-26, 28, 30, 34-37, 41-45, 49-58, 60-64, 68 above, further in view of LaBaw et al. (US 4904488).

23. Regarding claims 31-33, as discussed above in the rejection of claim 19, modified Sheu includes a microwave susceptor, which may extend across the entire bag or only a portion thereof, for economic reasons, but Sheu is silent teaching the susceptor should be 25-50% the length of the bag as recited in claim 31, 30-40% the length as recited in claim 32, or 75-85% the width of the bag as recited in claim 33.

24. LaBaw et al. also teach a three part microwave popcorn bag. LaBaw et al. further teach the number of unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the portion of the bag in touch with the microwave base) is covered by susceptor (See items 30 and 130 in Figures 4, 5, 10, 11, Column 9, lines 15-26). Therefore, it would have been obvious to select a length between 25 and 50% of the bag since LaBaw et al. clearly show in the Figures greater than around 33%. Further, to select any particular length susceptor relative to the length of the bag would have been obvious depending the particular length of the bottom surface relative the length of the bag since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the length of the susceptor relative to

Art Unit: 1761

the length of the bottom surface. Furthermore, to select any particular width of susceptor relative to the width of the bag would have been obvious depending on the number of unpopped kernels allowed since LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the width of the susceptor relative to the width of the bottom surface.

25. Regarding claims 47 and 66, as discussed above in the rejection of claim 19, modified Sheu includes a susceptor which may extend across the entire bag or only a portion thereof, for economic reasons, but modified Sheu is silent in teaching the susceptor covers less than 90% of the middle region.

26. LaBaw et al. also teach a three portion bag with the ingredients in the middle section, teach the number of unpopped kernels remaining in a three-part bag is reduced when most of the bottom surface of the bag (i.e. the middle portion of the bag in touch with the microwave base that contains the ingredients) is covered by susceptor (See items 30 and 130 in Figures 4,5,10,11, Column 9, lines 15-26).

27. Therefore to select a susceptor length of less than 90% of the length of the middle section would have been obvious depending on the number of unpopped kernels desired after popping versus the economic benefits of reducing the susceptor length since minimizing the size of a susceptor for microwave popcorn bag for economic reasons and LaBaw et al. teach to minimize the number of unpopped kernels one must maximize the susceptor relative to the portion of the bag holding the ingredients (i.e. the middle portion) .

Art Unit: 1761

28. Claims 47 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) in view of Glass (US 5897894) further in view of LaBaw et al. (US 4904488), as applied to claims 31-33, 47 and 66 above, further in view of Monsalve (US 5919505).

29. Regarding claims 48 and 67, Sheu teaches 20-60% kernels (Page 5, lines 23-27), as recited in claims 48 and 67, 12.8% fat (Example B) and 40-80% sugar component, or pellets (Abstract). Sheu teaches the fat may be included with the pellet or with the kernels (i.e. Example A versus Example B). Although Sheu teaches the amount of sugar component or pellet added depends on the type of ingredients used, including sugarless sweeteners, and the desired level of sweetness, while the overall composition may be high fat, low fat or no-fat (Page 5, lines 36-39, Page 6, lines 8-13). Sheu is silent in explicitly teaching anywhere in the range of 1-35% sugar pellets as recited in claims 48 and 67 and a fat level anywhere in the range of 20-50% as recited in claims 48 and 67.

30. Monsalve is relied on as evidence of the particular fat level associated with high fat, reduced fat, and low fat popcorn products, wherein low fat is 2-8% fat, reduced fat is 8-15% and high fat is 25-40% (Column 4, line 67 to Column 5, line 14). Therefore to select any particular fat level between 20% and 50% would have been obvious, depending on the desired fat level of the product since Sheu teaches the composition may be high fat, low fat, or fat-free, and Monsalve teaches low fat popcorn products have 2-8% fat, reduced fat popcorn has 8-15% and high fat popcorn has 25-40%. Furthermore to select any particular level of sugar component or pellet less than 40%,

Art Unit: 1761

would have been obvious depending on (1) the composition of the sugar pellet and (2) the desired sweetness since Sheu teaches the amount of sugar pellet added may vary according to these two variables. For example, it was well known in the art that sugarless high intensity sweeteners can provide the same sweetness as sugar, but at a lower concentration, and a composition including "sugarless" pellets made with such high intensity sweeteners could be included at a lower concentration, yet provide the same sweetness as "sugar" containing pellets.

Response to Arguments

31. Applicant's arguments, filed May 10, 2004 with respect to the rejections of Claims 1,2,4-11,13,49-51,68 under 35 U.S.C. 102(b) as being clearly anticipated by Sheu (WO 00/60954) have been fully considered and are persuasive since, although Sheu teaches cutting the sugar mass into desired pieces, Sheu does not explicitly teach "pieces" are placed in the microwave popcorn bag. Accordingly, the rejections of Claims 1,2,4-11,13,49-51,68 under 35 U.S.C. 102(b) as being clearly anticipated by Sheu (WO 00/60954), Claims 16 and 17 under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954), further in view of Katz et al. (US 3851574), Claims 18-30,34-43,45,46,54-63,65 under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) further in view of Monsalve (US 5919505), Claims 47,48, 66,and 67 under 35 U.S.C. 103(a) as being unpatentable over Sheu (WO 00/60954) further in view of Monsalve (US 5919505) further in view of Glass (US 5897894) and LaBaw et al. (US 4904488), and Claims 52 and 53 under 35 U.S.C. 103(a) as being unpatentable

Art Unit: 1761

over Sheu (WO 00/60954) as applied to claims 1,2,4-11,49-51,68 have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

32. Applicant's arguments, filed May 10, 2004 with respect to the rejections of Claims 1-3,6-9, 13-15,18-30,34,38,39,49,51,54-58, 60-65, and 68 under 35 U.S.C. 102(b) as being clearly anticipated by Glass (US 5897894) and Claims 31-33,41-47,66 under 35 U.S.C. 103(a) as being unpatentable over Glass (US 5897894), further in view of LaBaw et al. (US 4904488) have been fully considered. Glass teaches 0.5% sugar without added components, or a homogeneous pellet (i.e. not "unhomogenized") will not cause burning. Therefore, the rejections have been withdrawn. However, upon further consideration, a new ground(s) of rejection is made as set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Robert Madsen
Examiner
Art Unit 1761

RAM